



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 14, 1999

RE: Pending Notice of Violation for Illegal Diversion of Water at Nichols Heading, Water District 34, Water Right Nos. 34-00646, 34-00647 (Pearson), 34-12366, 34-00691A (Rowe), 34-00088, 34-00577B (Brad Haralson), 34-00509B, 34-00510B (Perkes), 34-00911, 34-00559, 34-00508 (Granite Trust), 34-00509A, 34-00510A (Billy Haralson), 34-10776, 34-00171 (PU Ranch)

Dear Wateruser:

During a recent visit to a water diversion near your property south of Moore, Idaho, both myself and watermaster Doug Rosenkrance observed Big Lost River water diverted into private ditches from an unauthorized point of diversion. The diversion, locally known as "Nichols Heading," is located at T04N R26E 09 SWSWNE, just upstream of the flume delivering water from the West-Side-West ditch to the east side of the Big Lost River and into the same system of private ditches. This point of diversion is authorized only for Water Right Nos. 34-00646 and 34-00647 (Pearson), but not for any other rights identified above. The diversion does not have a lockable headgate nor a functional measuring device.

Per Doug Rosenkrance, it is my understanding that the above referenced rights are delivered from the Big Lost River into the Moore Canal where the Big Lost River Irrigation District is then responsible for further delivery of water to your properties. Water is normally delivered to properties on the east side of the Big Lost River via the above mentioned flume downstream of Nichols Heading.

Idaho Code §42-351 states:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

Idaho Code §42-701 states:

The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

This letter is notification that the Department may issue a Notice of Violation for illegal diversion of water unless diversion ceases by July 22, 1999. However, water may be diverted by Pearson for Water Right Nos. 34-00646 and 34-00647 provided a lockable headgate and measuring device are installed by July 29, 1999. Waterusers who desire to use this diversion in the future may make an Application for Transfer to add this diversion point to their water rights. In any case, a lockable headgate and measuring device must be installed for this diversion to be used. Please respond to Watermaster Doug Rosenkrance (208-588-3137) or myself about this matter by July 22, 1999.

Thank you for your cooperation in this matter. If you have questions, please contact me by mail at the above address or by phone at (208) 327-7897.

Sincerely,



Scott King
Water Distribution

Mailing List

I, R. Lovell, hereby certify that I mailed this date July 14, 1999 a true and correct copy of Pending Notice of Violation for Illegal Diversion of Water at Nichols Heading, Water District 34, Water Right Nos. 34-00646, 34-00647 (Pearson), 34-12366, 34-00691A (Rowe), 34-00088, 34-00577B (Brad Haralson), 34-00509B, 34-00510B (Perkes), 34-00911, 34-00559, 34-00508 (Granite Trust), 34-00509A, 34-00510A (Billy Haralson), 34-10776, 34-00171 (PU Ranch), to the following individuals:

Jay & Susan Pearson
Rt 1 Box 47
Moore, ID 83255

Marshal Todd Perkes
Rt 1 Box 69
Moore, ID 83225

P U Ranch
4500 Imperial Ave
San Diego, CA 92113

James & Janet Rowe
4500 Antelope Rd
Moore, ID 83255

Granite Trust Organization
PO Box 66
Moore, ID 83255

Brad Haralson
Rt 1 Box 455
Arco, ID 83213

Billy Haralson
Rt 1 Box 450
Arco, ID 83213

Doug Rosenkrance, Watermaster
Water District 34
PO Box 53
Mackay ID 83251

Big Lost Irrigation District
PO Box 205
Mackay ID 83251

Signed:

Roberta Lovell
Sec. Water Dist.